

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. App. No. 231/2004

Judgment reserved on: 12.09.2007

Judgment delivered on: December 20,2007

Smt. Rasheeda Begum Appellant
Through: Mr. S. Shahi, Adv.

versus

DTC & Ors. Respondents
Through: Mr. Ataul Haque, Adv. for R-1.
Mr. A.K. De with Mr. Ankur Gupta,
Adv. R-2.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

KAILASH GAMBHIR, J.

1. By way of this appeal the appellant has claimed enhancement in compensation over and above the compensation as awarded by the learned Tribunal in the impugned Award dated 17.2.2004. The detailed facts of the case need not be elaborated as it is admitted case that a fatal accident involving death of the son of the appellant had occurred due to the rash and negligent driving on the part of the DTC bus bearing registration No. DEP 9353 and a Mini bus bearing registration No. DBP – 1395 on 21.1.1991.

2. The appellant is primarily aggrieved with the meager amount of compensation awarded in her favour by the Tribunal. Mr.S. Shahi, counsel for the appellant contended that the deceased was at his prime age of 26 years and ignoring the applicable multiplier as laid in schedule II of the Motor Vehicles Act the Tribunal has taken into consideration the multiplier of 8 for calculating the compensation. The counsel further contended that the appellant has also been deprived of the interest from the

date of the filing of the petition i.e. December, 1991. The interest has merely been granted with effect from 6.1.2001. Counsel for the appellant also contended that no compensation towards the future prospects of the deceased has been granted by the Tribunal and no compensation for the loss of love and affection has been granted and even no funeral expenses have been granted by the Tribunal. The contention of the appellant is that in a most prefidious and pedantic manner the Tribunal has awarded a meager sum of Rs. 63,000/- towards the compensation for the death of a young man of 26 years. Counsel for the appellant further contended that the Tribunal has wrongly concluded that there was no proof of age of the appellant despite filing of the election card by the appellant before the Tribunal. The contention of the counsel for the appellant is that the age of the appellant at the time of the filing of the petition was about 40 years and at the time of deposition it was 49 years. The counsel further contended that the appellant has also illegally been deprived of the interest from the

date of filing the petition by misconstruing the order dated 6.9.2001 passed by the High Court, which in no way stated that the appellant will not be paid interest from the filing of the petition. The counsel also urged that even the rate of interest is quite on the lower side.

Per contra Mr. Ataul Haque, counsel appearing for the respondent contended that the amount of compensation awarded by the Tribunal is just and proper keeping in view the facts and circumstances of the case. The counsel for the respondent has relied upon the judgment of the Apex Court in **Sarla Dixit Vs. Balwant Yadav 1991 ACJ 581 (SC)** to refute the argument of the counsel for the appellant that the Tribunal should have taken into consideration the future prospects of the deceased to determine the loss of the income. Counsel for the respondent has also contended that the Tribunal has correctly applied the multiplier of 8 after taking into consideration the age of the appellant as 38 years on the date of the accident. Counsel has further contended that the age

of the appellant on the date of the accident could not have been 40 years as the age of the deceased as per own case of the appellant was 26 years as on the date of the accident. Counsel also contended that the appellant herself had disclosed the age of the pre-deceased father of the deceased as 80 years, who died much prior to the date of the accident, which occurred in the year 1981.

Counsel has placed reliance on the following judgments in support of his contentions:

**1) Rani & Ors. Vs. Sahabuddin & Ors.-
2006 ACJ 837 (Del)**

**2) Chunni Lal & Anr. Vs. Satpal & Ors.-
2005 ACJ 1721 (Del)**

**3) Lalita Devi & Ors. Vs. Mewa Singh &
Ors.- 2006 ACJ 941 (Del)**

**4) Mathura Dutt & Ors. Vs. DTC & Anr.-
2006 ACJ 1129 (Del)**

I have heard counsel for the parties and have also

perused the records.

The income of the deceased has been determined after making reference to the Minimum Wages Act, as the appellant failed to prove on record the exact income of the deceased. This Court has also taken a consistent view that the increase in the minimum wages under the Minimum Wages Act cannot be treated at par or akin to the future prospects as the increase in the minimum wages is made by the Government from time to time after taking into consideration the inflationary trends and denunciation of currency value and other economic factors. The appellant is thus entitled to claim the benefit of the said increase as per the Minimum Wages Act. As the income of the deceased @ Rs.990/- has been determined under the Minimum Wages Act for the year 1991, therefore, the appellant would be entitled to the benefit of increase under the Minimum Wages Act.

As regards the contention as far as the multiplier is concerned, the appellant in her deposition, which was made in

the year 2002 had stated her age to be of 50 years. The Tribunal has disbelieved the said age due to the fact that the husband of the appellant and father of the deceased had died at the age of 80 years much prior to the date of the said accident as the death certificate of the father of the deceased which is placed on record by the appellant shows that he died in the year 1980. The election identity card filed by the appellant shows the appellant's age as 42 years in the year 1995 which means the appellant correctly disclosed her age as 49 years on the date of deposition in the year 2002. The appellant has stated that in her deposition the date of death of the father of the deceased was wrongly mentioned due to some typographical error. If the age of the appellant at 49 years in the year 2002 is accepted as correct, then it would be difficult to accept the age of the deceased on the date of the accident i.e., in January 1991 as 26 years. It is thus apparent that the appellant has failed to prove her correct age and due to which the Tribunal has disbelieved the testimony of the appellant. It appears that either the age of

the deceased as disclosed by the appellant is incorrect or the age of the appellant has not been correctly disclosed. In any case of the matter, the multiplier of 8 appears to be quite on the lower side. Considering the facts of the present case the appropriate multiplier would be 11 as applicable to the age group between 50 to 55 years as per the Second Schedule of the Motor Vehicles Act.

Dealing with the argument of the counsel for the appellant regarding denial of interest with effect from the date of filing of the petition till realisation, I am of the view that the Tribunal has wrongly deprived the appellant from the benefit of the interest from the said period. With regard to the Reference to the order dated 6.9.2001 passed by this Court in CM.(M) No. 304/2001, it is manifest that the Court has merely stated that the respondent could be best compensated by not awarding the interest in favour of the appellant from the date of dismissal of the case till the date of the said order. The compensation petition filed by the appellant was dismissed in default in

17.12.98 and the same was restored by the High Court vide order dated 6.9.2001, therefore, at the most the Tribunal could have taken the said period from the date of dismissal till its restoration into account for denying the benefit of interest and not for the period with effect from filing of the petition till the date of the award. Accordingly, the appellant is held entitled to claim interest @7.5% per annum with effect from the date of filing of the petition till 17.12.98 and then from 6.9.2001 till the date of award i.e., 17.2.2004. As regards the interest payable from the date of the said award till realisation, the appellant shall be entitled to interest @ 9% per annum.

Perusal of the award shows that the Tribunal has not allowed any compensation towards the funeral expenses, therefore, I allow a sum of Rs.5,000/- towards the funeral expenses in favour of the appellant and against the respondent Nos. 1 to 3. The appellant is also entitled to a sum of Rs.10,000/- towards the loss of love and affection due to the death of her only child.

In the light of the aforesaid discussion, the compensation for the loss of future income shall be determined by taking the mean of minimum wages in the year 1991 of a semi skilled worker i.e., Rs.891/- with the wages of the year 2002 i.e. Rs.2758/-, i.e., 11 years period of multiplier. The appellant thus shall be entitled to a sum of Rs.14,596/- towards loss of income towards dependency. As already held the multiplier of 11 is appropriate keeping in view the facts of the present case and not the multiplier of 8 as has been determined by the Tribunal. Therefore, the compensation shall come out as Rs.1,60,556/-. The appellant shall be further held entitled to a sum of Rs.10,000/- towards loss of love and affection and Rs.5,000/- for funeral expenses. The appellant shall be entitled to interest on the said amount w.e.f. 17.12.98 @7.5% and then from 6.9.2001 the appellant shall be held entitled to claim interest @9% from the date of the award till its realisation or final payment.

With these directions the matter is remanded back to

the Tribunal to carry out the aforesaid directions and modify the award accordingly.

December 20, 2007
rkr/mg

KAILASH GAMBHIR
JUDGE